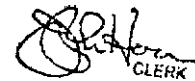


**FILED**

FEB 01 2007

  
CLERK

Honorable Lawrence L. Piersol  
U.S. District Court  
400 S. Phillips Ave. Rm. 128  
Sioux Falls, SD 57104-6851

J.B. Van Whye # 46739  
S.D. State Penitentiary  
P.O. Box 5911  
Sioux Falls, SD 57117-5911

**CIV 07-4013**

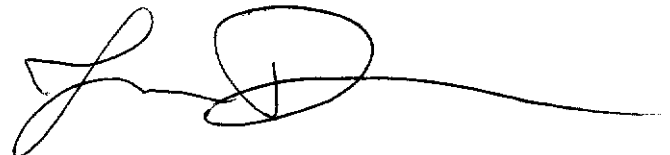
26 January 2007

Hon. Lawrence Piersol,

Currently I am being denied food at the South Dakota State Penitentiary. On 1-12-07 I was removed from my religious diet for disciplinary reasons and have not been able to eat mainline food because of my religious convictions. Enclosed find the letter, affidavit and motion for protection order which I sent to your Clerk of Court. These items were sent back to me unresolved along with a form packet for filing a 1983 suit. The problem is that I cannot file a complaint until I have exhausted my administrative remedies - per the PLRA - which takes over (30) working days. Am I suppose to go without food for 40-50 days before I may obtain relief? This is an emergency!

Enclosed also find <sup>the</sup> ~~my~~ stage one response received concerning exhaustion along with my submitted stage two request for administrative remedy. I am also enclosing the required information and affidavit for in forma pauperis status. Please grant me such temporary relief as available so that I may eat without violating my religious beliefs while I wait for the administrative response to my grievance.

Respectfully



DECLARATION UNDER PENALTY OF perjury of: JAMES DEAN VAN WYHE

I, JAMES DEAN VAN WYHE # 46739, Being Competent to make this DECLARATION AND HAVING PERSONAL KNOWLEDGE OF THE MATTERS HEREIN, DECLARES PURSUANT TO 28 U.S.C. 1746.

1. I, JAMES DEAN VAN WYHE, AM A PRISONER IN THE CUSTODY OF THE SOUTH DAKOTA DEPARTMENT OF CORRECTIONS (SDDOC) BEING HOUSED AT THE SOUTH DAKOTA STATE PENITENTIARY (SDSP) UNDER THE CARE AND SUPERVISION OF WARDEN DOUGLAS WEBER.
2. MY RELIGIOUS BELIEFS ARE SINCERELY HELD AND REQUIRE THE OBSERVANCE OF A KOSHER DIET IN ACCORDANCE WITH THE TORAH AND TEACHINGS OF THE RABBIS & SAGES.
3. THAT I HAVE OBSERVED A KOSHER DIET SINCE 1996.
4. UPON MY INCARCERATION WITHIN THE SDDOC, I NOTIFIED THE APPROPRIATE PERSONNEL OF MY NEED FOR A KOSHER DIET AND WAS APPROVED ON OR ABOUT AUGUST 23, 2006.
5. THAT SINCE THIS TIME I HAVE FAITHFULLY MAINTAINED A STRICT KOSHER DIET IN ACCORDANCE WITH MY RELIGIOUS BELIEFS.
6. ON THE 16<sup>TH</sup> OF AUGUST 2006, THE SDDOC/SDSP IMPLEMENTED A NEW RELIGIOUS DIET POLICY. STATED POLICY MAY REMOVE A PRISONER FROM A KOSHER DIET FOR A VARIETY OF MINOR SANCTIONS WITHOUT BENEFIT OF DUE PROCESS.

7. THAT ON Dec 26, 2006 I WAS ACCUSED OF DRINKING KOOL-AID FROM A NON-KOSHER CONTAINER. AND AGAIN ON JAN 11, 2007 OF EATING A COOKIE FROM GENERAL POPULATION MAIN LINE. I DENIED BOTH THESE ACCUSATIONS AND ASKED TO VIEW THE EVIDENCE BEING USED AGAINST ME.
8. I WAS NOT ALLOWED TO REVIEW EVIDENCE (SURVEILLANCE) NOR QUESTION/CALL WITNESSES. I WAS FOUND GUILTY AND REMOVED FROM MY KOSHER DIET FOR (30) DAYS ON JANUARY 12<sup>TH</sup>, 2007. I HAVE APPEALED THESE DECISIONS W/O AVAIL. (SEE ATTACHMENTS 1, 2, 3, 4 AND 5).
9. I AM SINCERE IN MY RELIGIOUS BELIEFS AND PRACTICES AND WILL NOT WILLINGLY EAT FROM A NON-KOSHER FOOD TRAY. BECAUSE I HAVE BEEN REMOVED FROM MY KOSHER DIET, MY LAST MEAL WAS BREAKFAST ON JAN 18, 2007.
10. BECAUSE THE SDDOC DEEMS A PRISONERS REFUSAL TO EAT AS A MAJOR RULE INFRACTION WHICH NORMALLY RESULTS IN DISCIPLINARY SEGREGATION, I HAVE BEEN PLACED IN THE POSITION OF HAVING TO CHOOSE BETWEEN MY RELIGIOUS BELIEFS OR ACCEPTING DISCIPLINARY SANCTIONS WHICH WOULD BE FAR-REACHING AFFECTING CUSTODY LEVEL, HOUSING, JOB ASSIGNMENTS, PROGRAMS AND EARLY RELEASE POSSIBILITIES.
11. IN ATTEMPTING TO AVOID THIS MAJOR RULE INFRACTION, I OBTAINED A KOSHER FOOD ITEM (AN ORANGE) ON 1-20-07 WHICH WAS LEFT ON A DINING ROOM TABLE. WHEN I STARTED TO PEEL THE ORANGE, I WAS GIVEN A DIRECT ORDER FROM SGT. BEKER TO EITHER THROW THE ORANGE AWAY OR RECEIVE A WRITE UP FOR DISOBEYING A DIRECT ORDER (ie to throw the orange away)
12. I HAVE FILED AN INFORMAL RESOLUTION REQUEST (STEP ONE OF THE EXHAUSTION OF -

THE ADMINISTRATIVE REMEDIES) ON JAN 17, 2007. I PLAN ON FULLY EXHAUSTING MY REMEDIES IF I AM UNABLE TO RECEIVE A SATISFACTORY RESPONSE. THOUGH THIS WILL TAKE APPROXIMATELY (35) "WORKING" DAYS PER THE ADMINISTRATIVE REMEDY POLICY AND POSTED EXTENSIONS. (SEE ATTACHMENT 6).

13. I HAVE SENT THE "PRISONER TRUST ACCOUNT REPORT" PROVIDED IN THE 1983 PACKET TO THE SDSP BUSINESS OFFICE ON JAN 17<sup>TH</sup>, 2007 BUT HAVE YET TO RECEIVE A RESPONSE.

14. MY LAST FINANCIAL STATEMENT ON JAN 2, 2007 HAD A DEPOSIT OF \$31.50 AND AN ENDING BALANCE OF \$0.69 FOR THE MONTH OF DEC 2006. (SEE ATTACHMENT 7).

15 I AM HUNGRY AND WANT TO EAT, BUT AM UNABLE TO EAT THE FOOD PROVIDED TO GENERAL MAINLINE. I WILL EAT ANY KOSHER FOOD OFFERED AND/OR PROVIDED.

PURSUANT TO 28 U.S.C. 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO MY UNDERSTANDING AND BELIEF.

EXECUTED ON THIS 29<sup>TH</sup> DAY OF JANUARY, 2007.



JAMES DEAN VAN WYKE #46739

PO BOX 5911

SIOUX FALLS SD <sup>(JD)</sup> 57107  
57117

\* ATTACHMENT (1)

## DISCIPLINARY REPORT

1. NAME OF INMATE (Last, First) Van Whye, James	2. INMATE NUMBER 46739	3. DATE OF INCIDENT 12/26/06	4. TIME 5:10 PM
5. PLACE OF INCIDENT Hill Dining Hall	6. ASSIGNMENT Wheel Chair	7. UNIT AND CELL NUMBER NRTH N169	
8. PROHIBITED ACT Failure to abide by rules / logs.			9. ACT# 3-1
10. DESCRIPTION OF INCIDENT (Date: 12/26/06 Time: 5:10 PM Staff became aware of incident)			
<p>On the above date and time I observed inmate Van Whye empty the juice from another inmates regular dining hall cup into Van Whye's Kosher cup, then consume the juice.</p> <p>End of Report</p>			
11. DISCIPLINARY REPORT WRITTEN BY (Printed Name/Signature) Captain Brown 1/1 3/2		12. DATE WRITTEN 12/26/06	13. TIME WRITTEN 6:10 pm
14. DISCIPLINARY REPORT DELIVERED TO ABOVE INMATE BY (Printed Name/Signature) CPL J. Seichert		15. DATE DELIVERED 12-26-06	16. TIME DELIVERED 8:14 pm
UDC ACTION			
17. COMMENTS OF INMATE TO UDC REGARDING ABOVE INCIDENT (AFTER ADVISING INMATE OF HIS RIGHT TO REMAIN SILENT)			
<p>I wanted water, it was water that I poured into my cup</p>			
18. (A) IT IS THE FINDING OF THE UDC THAT YOU: <input checked="" type="checkbox"/> COMMITTED THE FOLLOWING PROHIBITED ACT(S): 3-1 <input type="checkbox"/> DID NOT COMMIT A PROHIBITED ACT.		(B) <input type="checkbox"/> THE UDC IS REFERRING THE CHARGE(S) TO THE DISCIPLINARY OFFICER FOR FURTHER HEARING. (C) <input checked="" type="checkbox"/> THE UDC ADVISED THE INMATE OF ITS FINDINGS AND OF THE RIGHT TO FILE AN APPEAL WITHIN 30 DAYS.	
19. UDC DECISION IS BASED ON THE FOLLOWING INFORMATION Report			
20. UDC ACTION Verbal Warning			
21. DATE AND TIME OF ACTION 12/27/06 @ 1057 AM HVE 1/1/07			
Chairman (Printed Name/Signature)		Member (Printed Name/Signature)	

WHITE - Inmate's Institutional File.  
YELLOW - Associate Warden for Custody.

PINK - Inmate after the UDC hearing.  
GOLD - Inmate within 24 hours of item #13.

G-28

\* ATTACHMENT (2)

ATTACHMENT (6)

## DISCIPLINARY REPORT

1. NAME OF INMATE (Last, First) <u>Van Wyke, James</u>	2. INMATE NUMBER <u>46739</u>	3. DATE OF INCIDENT <u>11/1/07</u>	4. TIME <u>4:50PM</u>
5. PLACE OF INCIDENT <u>SDSP Dining Hall</u>	6. ASSIGNMENT <u>Wheel Chair</u>	7. UNIT AND CELL NUMBER <u>NBTH N169</u>	
8. PROHIBITED ACT <u>Failure to abide by posted/written reg.</u>			9. ACT# <u>3-1</u>
10. DESCRIPTION OF INCIDENT (Date: <u>11/1/07</u> Time: <u>4:50pm</u> Staff became aware of incident)			
<p>#2 On the above date and time I observed inmate Van Wyke eating a cookie from a regular tray. Inmate Van Wyke is on the Kosher diet list.</p> <p style="text-align: center;">End of Report</p>			
11. DISCIPLINARY REPORT WRITTEN BY (Printed Name/Signature) <u>Capt. J. Brown</u>		12. DATE WRITTEN <u>11/1/07</u>	13. TIME WRITTEN <u>5:30pm</u>
14. DISCIPLINARY REPORT DELIVERED TO ABOVE INMATE BY (Printed Name/Signature) <u>Sgt. Van Voorst</u>		15. DATE DELIVERED <u>1-11-07</u>	16. TIME DELIVERED <u>5:54pm</u>
UDC ACTION			
17. COMMENTS OF INMATE TO UDC REGARDING ABOVE INCIDENT (AFTER ADVISING INMATE OF HIS RIGHT TO REMAIN SILENT)			
<p>I was not eating a cookie</p>			
18. (A) IT IS THE FINDING OF THE UDC THAT YOU:		(B) THE UDC IS REFERRING THE CHARGE(S) TO THE DISCIPLINARY OFFICER FOR FURTHER HEARING.	
<input checked="" type="checkbox"/> COMMITTED THE FOLLOWING PROHIBITED ACT(S): <u>3-1</u> <input type="checkbox"/> DID NOT COMMIT A PROHIBITED ACT.		<input checked="" type="checkbox"/> (C) THE UDC ADVISED THE INMATE OF ITS FINDINGS AND OF THE RIGHT TO FILE AN APPEAL WITHIN 30 DAYS.	
19. UDC DECISION IS BASED ON THE FOLLOWING INFORMATION <u>Report.</u>			
20. UDC ACTION <u>30 days loss of Kosher trays</u>			
21. DATE AND TIME OF ACTION <u>1/12/07 @ 9:14am</u>			
Chairman (Printed Name/Signature) <u>Held</u>		Member (Printed Name/Signature) <u>Held</u>	

WHITE - Inmate's Institutional File.  
 YELLOW - Associate Warden for Custody.

PINK - Inmate after the UDC hearing.  
 GOLD - Inmate within 24 hours of item #13.

G-28

# ATTACHMENT (3)

## Informal Resolution Request

VAN WyHE James Dean 46739  
 Inmate Last Name First ID #  
1-18-07 EAST HALL N-109  
 Date Unit

State your problem/Complaint. Be specific, giving dates, times and basics:

THIS IS TO GRIEVE AGAINST TIM REISCH, Doug WEBER, J. WAGNER, SHARON C.  
AND C.B.M. FOODS FOR DENYING ME A DIET WHICH CONFORMS TO MY RELIGIOUS BELIEFS.  
(A KOSHER DIET) BY DENYING ME A KOSHER DIET THEY ARE IN EFFECT DENYING ME FOOD  
AS I AM UNABLE TO EAT FOOD WHICH IS NOT KOSHER.

What action are you requesting? IMMEDIATE REINSTATEMENT OF MY KOSHER DIET.

## For Staff Use

Date Received: 1/18/07 By: L. PERSON

What steps did you take to resolve the problem? \_\_\_\_\_

What was the result of your attempts? \_\_\_\_\_

Date returned to inmate: \_\_\_\_\_ By: \_\_\_\_\_

ORIGINAL - To inmate after staff response - To be used if appealed  
 YELLOW - To inmate after staff response  
 PINK - To unit file after staff response  
 GOLD - To inmate after receipting in

\* ATTACHMENT (4)

## Informal Resolution Request

VAN WYHE JAMES DEAN H6739  
 Inmate Last Name First ID #  
1-18-07 EAST HALL N-169  
 Date Unit

State your problem/Complaint. Be specific, giving dates, times and basics:

THIS IS TO GRIEVE AGAINST TIM REISCH, DONG WEBER AND H. VELD FOR  
 DENIAL OF OUR PROCESS ON A 3.1 VIOLATION ON 1/11/07 THAT HAS  
 RESULTED IN ME BEING DENIED A KOSHER DIET THAT CONFORMS TO MY  
 ESTABLISHED RELIGIOUS BELIEFS, AS OF 1-18-07.

What action are you requesting? IMMEDIATE REINSTATEMENT OF KOSHER DIET

## For Staff Use

Date Received: 1/18/07 By: L. PERSON.

What steps did you take to resolve the problem?

What was the result of your attempts?

Date returned to inmate: \_\_\_\_\_ By: \_\_\_\_\_

ORIGINAL - To inmate after staff response - To be used if appealed  
 YELLOW - To inmate after staff response  
 PINK - To unit file after staff response  
 GOLD - To inmate after recelpting in



## Informal Resolution Request

VAN WyHE James DEAN 46739  
 Inmate Last Name First ID #  
 1-18-07 EAST HALL N-169  
 Date Unit

State your problem/Complaint. Be specific, giving dates, times and basics:

THIS IS TO GRIEVE AGAINST TIM REISCH, DUG WEBER AND H. VELD FOR DENIAL OF OUR PROGRESS ON A 3.1 VIOLATION ON 1/11/07 THAT HAS RESULTED IN ME BEING DENIED A KOSHER DIET THAT CONFORMS TO MY ESTABLISHED RELIGIOUS BELIEFS AS OF 1-18-07.

What action are you requesting? IMMEDIATE REINSTATEMENT OF KOSHER DIET

## For Staff Use

Date Received:

1/18/07

By:

L. PERSON

What steps did you take to resolve the problem?

Reviewed Disciplinary Report. Reviewed Policy. Reviewed with Unit Team. Notified Inmate.

What was the result of your attempts?

Mr. Van Wyhe's 400 disciplinary report was conducted according to policy 1.3.6.2. by staff. The sanction imposed is per the Religious Diet policy 1.5.6.2.

Date returned to inmate:

1/24/07

By:

L. PERSON

ORIGINAL - To inmate after staff response - To be used if appealed  
 YELLOW - To inmate after staff response  
 PINK - To unit file after staff response  
 GOLD - To inmate after receipting in

## Informal Resolution Request

VAN WYHE  
 Inmate Last Name

JAMES DEAN  
 First

46739  
 ID #

1-18-07  
 Date

EAST HALL N-169  
 Unit

State your problem/Complaint. Be specific, giving dates, times and basics:

THIS IS TO GRIEVE AGAINST TIM REISCH, DOUG WEBER, J. WAGNER, SHARON C.  
 AND CBM FOODS FOR DENYING ME A DIET WHICH CONFORMS TO MY RELIGIOUS BELIEFS.  
 (A KOSHER DIET) BY DENYING ME A KOSHER DIET, THEY ARE IN EFFECT DENYING ME FOOD  
 AS I AM UNABLE TO EAT FOOD WHICH IS NOT KOSHER.

What action are you requesting? IMMEDIATE REINSTATEMENT OF MY KOSHER DIET.

## For Staff Use

Date Received: 1/18/07 By: L. PEPSON

What steps did you take to resolve the problem?

Reviewed Policy. Reviewed with Unit Ten  
 Notified Inmate.

What was the result of your attempts? Mr. Van Wyhe: The above  
 mentioned staff are enforcing policy 1.5.F.2  
 as it is written. Due to your violation of policy  
 you are subject to the sanctions as stated  
 within the policy.

Date returned to inmate: 1/24/07 By: L. PEPSON

ORIGINAL - To inmate after staff response - To be used if appealed  
 YELLOW - To inmate after staff response  
 PINK - To unit file after staff response  
 GOLD - To inmate after receipting in